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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,030	03/06/2002	Peyton W. Hall	TRIA:005	7597
36275 7590 07/24/2007 O'KEEFE, EGAN, PETERMAN & ENDERS LLP 1101 CAPITAL OF TEXAS HIGHWAY SOUTH #C200 AUSTIN, TX 78746			EXAMINER PATEL, NIHIR B	
			ART UNIT 3772	PAPER NUMBER
			MAIL DATE 07/24/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	Application No. 10/092,030	Applicant(s) HALL ET AL.	
	Examiner Nihir Patel	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04.09.2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.  
     4a) Of the above claim(s) 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 16-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06.26.2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of group 1 (claims 1-7 and 16-28) in the reply filed on April 9<sup>th</sup>, 2007 is acknowledged. The traversal is on the ground(s) that the examiner has already mailed two substantive office actions. Further, under the statute, the claims of an application may properly be required to be restricted to one of two or more inventions if they are able to support separate patents and they are independent. See MPEP section 803. The application sets forth two independent inventions, regardless of two prior actions. This is not found persuasive because the applicant has not distinctly and specifically point out the supposed errors in the restriction requirement.

Claims 8-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 12<sup>th</sup>, 2007.

The requirement is still deemed proper and is therefore made FINAL.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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3. Claim 27 is rejected under 35 U.S.C. 102(e) as being anticipated by Gill et al. (US 6,247,619).

4. As to claim 27, Gill teaches an apparatus that comprises a bladder 1 configured to hold a fluid (see abstract), wherein bladder comprises an outer layer of chemically resistant composite (see column 4 lines 45-55); a spout 11 connected to the bladder and in communication with the inside of the bladder, wherein the spout comprises an output port and a fill port for filling the bladder with liquid (see column 3 lines 25-35); a cap 2 adapted to engage and close the fill port (see column 3 lines 5-10); and a tube 20 having a first end connected to the output port of the spout and having a second end connected to a fluid delivery fitting (see column 3 lines 10-15).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-4, 7, 18, 22-26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gill et al. (US 6,247,619) in view of Petriello (US 3,229,014).

8. As to **claims 1, 23, 26 and 28**, Gill substantially discloses an apparatus that comprises a bladder **1** configured to hold a fluid (**see abstract**), a spout **11** connected to the bladder and in communication with the inside of the bladder, wherein the spout comprises an output port and a fill port for filling the bladder with liquid (**see column 3 lines 25-35**); a cap **2** adapted to engage and close the fill port (**see column 3 lines 5-10**); and a tube **20** having a first end connected to the output port of the spout and having a second end connected to a fluid delivery fitting (**see column 3 lines 10-15**), but does not disclose a bladder that comprises an outer layer made of fluorinated rubber composite. Petriello teaches an apparatus that does comprise a bladder that comprises an outer layer made of fluorinated rubber composite (**see column 2 lines 1-10**). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gill's invention by providing a bladder that comprises an outer layer made of fluorinated rubber composite as taught by Petriello in order to prolong the usefulness of the container.

9. As to **claim 2**, Gill teaches an apparatus wherein the bladder is flexible (**see column 3 lines 20-25**).

10. As to **claim 4**, Gill teaches an apparatus wherein the cap is adapted to screw into the fill port (**see column 3 lines 25-35**).

11. As to **claim 16**, Gill substantially discloses the claimed invention that comprises a method of at least partially filling the hydration system a fill port with a fluid, and closing the system by engaging the cap to the fill port (**see column 4 lines 10-25**), wherein the hydration system comprises a bladder **1** configured to hold a fluid (**see abstract**), a spout **11** connected to the bladder and in communication with the inside of the bladder, wherein the spout comprises an

output port and a fill port for filling the bladder with liquid (see **column 3 lines 25-35**); a cap **2** adapted to engage and close the fill port (see **column 3 lines 5-10**); and a tube **20** having a first end connected to the output port of the spout and having a second end connected to a fluid delivery fitting (see **column 3 lines 10-15**), but does not disclose a bladder that comprises an outer layer made of fluorinated rubber composite. Petriello teaches an apparatus that does comprise a bladder that comprises an outer layer made of fluorinated rubber composite (see **column 2 lines 1-10**). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gill's invention by providing a bladder that comprises an outer layer made of fluorinated rubber composite as taught by Petriello in order to prolong the usefulness of the container.

12. As to **claim 17**, Gill teaches a method step wherein the bladder is flexible (see **column 3 lines 20-25**).

13. As to **claim 19**, Gill teaches a method step wherein the cap is adapted to screw into the fill port (see **column 3 lines 25-35**).

14. As to **claims 3, 18 and 24**, Gill and Petriello substantially disclose claimed invention see rejection of claims 1, 16 and 23 above; but does not disclose an inner layer made of thermoplastic polyurethane. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gill's invention by designing the inner layer from thermoplastic polyurethane in order to prevent the stored liquid from being contaminated, since it has been held to be within general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, **125 USPQ 416**.

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15. As to **claims 7, 22 and 25**, Gill and Petriello substantially discloses the claimed invention, see rejection of claims 1, 16 and 23 above, but does not disclose a fluorinated rubber that comprises a polyamide reinforcing layer and a thermoplastic polymer layer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gill's invention by providing a fluorinated rubber that comprises a polyamide reinforcing layer and a thermoplastic polymer layer in order to prevent the stored liquid from being contaminated since it has been held to be within general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

16. Claims **5, 6, 20 and 21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gill et al. (US 6,247,619) in view of Petriello (US 3,229,014) as applied to claims 1 and 16 above, and further in view of Gardner et al. (US 6,032,831).

17. As to **claims 5, 6, 20 and 21**, Gill and Petriello substantially discloses the claimed invention; see rejections of claims 1 and 16 above, but does not disclose a spout that has a width greater than the height. Gardner teaches an apparatus that does provide a spout that has a width greater than the height (see **figure 1**). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gill/Petriello inventions by providing a spout that has a width greater than the height as taught by Gardner in order to take up less space and to prevent leakage.

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*Conclusion*


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Nihir Patel

  
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7/9/07